

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

EQUAL EMPLOYMENT OPPORTUNITY) No. 8:18CV329
COMMISSION,)
)
Plaintiff,)
)
ANDREW DEUSCHLE,)
)
Plaintiff Intervenor,)
)
vs.)
)
WERNER ENTERPRISES, INC.,)
) Omaha, Nebraska
Defendant.) August 14, 2020

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUSAN M. BAZIS
UNITED STATES MAGISTRATE JUDGE

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A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF:

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Commission
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FOR THE PLAINTIFF
INTERVENOR:

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FOR THE DEFENDANT:

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1 (At 1:00 p.m. on August 14, 2020; with counsel present
2 telephonically:)

3 THE COURT: All right. We are on the record in 8 --
4 8:18CV329, EEOC versus Werner Enterprises.

5 Will the attorney for the plaintiff please enter their
6 appearance for the record.

7 MR. DOTY: Yes, Your Honor. This is Grant Doty for
8 Plaintiff EEOC and also Meredith Berwick is on the line.

9 THE COURT: Thank you.

10 And for the intervenor?

11 MR. EAST: Brian East for the intervenor.

12 THE COURT: And for Werner Enterprises.

13 MR. CRAINER: Judge, Brandon Crainer and Elizabeth
14 Culhane for Werner.

15 THE COURT: All right. Thank you.

16 All right. Now, we are here in regards to a discovery
17 dispute. It is somewhat -- well, it is related to the
18 discovery dispute that we had at the end of April in regards
19 to -- I believe it was the routing comment documents that were
20 lately disclosed and then some issues about searches and terms
21 that were used to do those searches.

22 So, obviously, the Court issued an order and part of the
23 Court's concern I think back in April is what was being
24 requested. We didn't really know whether that was appropriate
25 or not or reasonable due to EEOC not having the information

1 that came in late and what was requested.

2 So it is my understanding kind of where we are is that
3 Werner did supplement discovery, as the Court ordered, that --
4 or at least responded to -- to additional discovery and did
5 provide the search terms and the databases that were searched
6 for the discovery that was produced in the spring of 2019
7 due -- due to the fact of the additional discovery of that --
8 the RCDs.

9 And then EEOC was going to assess what they had and if the
10 parties needed to meet and confer, and obviously, once EEOC has
11 all of their discovery, then they could determine who they
12 wanted to depose.

13 And based on the information that the EEOC received from
14 Werner has, I guess, precipitated where we are now and the
15 issues that the EEOC has with the information that was provided
16 by Werner and then is -- is asking based on that for, I guess,
17 certain things. For example, to expand search terms and things
18 of that nature.

19 So, I guess it would be my thought probably the best way
20 to do that is to start with the EEOC's issues. I know Werner
21 has some issues as well, some discovery issues, and we'll do
22 those after we do the EEOC's but to go through the EEOC's
23 statement that was sent to the Court and just address them as
24 they are and, of course, I've read each party's statements.

25 So, starting with -- I'm on page 2 of the EEOC's document

1 which indicates the remaining unresolved issues and proposed
2 remedy. So issue number one really comes down to, as I
3 understand the plaintiff's argument, that there were three
4 search terms that were used, that you within your complaint
5 obviously have challenged the policies and practices of Werner
6 Enterprises and, therefore, believe that additional search
7 terms should have been used initially, and you're asking that
8 those be used now.

9 One question I have -- and I don't know if I've asked this
10 in the last hearing we had but before we go any farther, it at
11 least makes some sense to me that initially before Werner did
12 anything that there would have been a conversation between the
13 parties as to the type of databases that Werner has, which ones
14 they plan to search, why they want to -- why they feel that's
15 where the majority of documents would be and then a discussion
16 between the parties and an agreement on search terms, but I'm
17 assume -- I don't want to assume but I'm assuming that didn't
18 happen because if it did, I'm not sure we would be here. I
19 think we would have been here on that issue.

20 So, Mr. Doty, did any of those conversations ever take
21 place?

22 MR. DOTY: I'm sorry, you broke up there.

23 THE COURT: Sorry.

24 MR. DOTY: I (static noise) did any of those --

25 THE COURT: Sorry. Go ahead.

1 MR. DOTY: So as you -- as you know, Your Honor, I --
2 I -- Miss Emily Keatley started this lawsuit, and she's now
3 left the EEOC so I -- I can't represent what --

4 THE COURT: Okay.

5 MR. DOTY: -- she may or may not have discussed.
6 I -- I don't believe that there was a discussion where specific
7 search terms were required.

8 I know our request for ESI search had three very detailed
9 pages of types of data and metadata that would be requested,
10 but I did not see anything on search terms or -- or databases.

11 THE COURT: Mr. Crainer or Culhane, did any of those
12 conversations ever take place to your knowledge?

13 MR. CRAINER: Judge, no, we did not have a
14 conversation before we did our search in discovery.

15 THE COURT: Okay. All right. Just -- just wanted to
16 know that.

17 All right. So, Mr. Doty, as to -- and the reasons why you
18 want those additional search terms are provided in -- in
19 paragraph labeled number 1 under heading C of your --

20 MR. DOTY: Yes, Judge.

21 THE COURT: -- statement.

22 Is there anything else you want to add in regards to that?

23 MR. DOTY: No. I mean, I -- I think, you know,
24 they -- Werner did respond to your order 140 from that April
25 conference that we had which they then revealed the search

1 terms and we had no idea that they were as narrow as they were,
2 and -- and -- and reading the -- the -- their position
3 statement, you know, they I think mischaracterizes very
4 narrowly as a lawsuit just regarding Mr. Robinson and
5 Mr. Deuschle and this case certainly goes beyond that.

6 And -- and we -- we think that those search terms as well
7 as a search -- and the next one are somewhat related. Searches
8 of additional databases would have been expected and -- and
9 would have produced documents.

10 THE COURT: Okay. Mr. Crainer, do you want to
11 respond? And, obviously, I've --

12 MR. CRAINER: Sure.

13 THE COURT: Go ahead.

14 MR. CRAINER: Yes, yes. Thank you, Your Honor. With
15 regard to focusing just here on -- on number 1 here and -- and
16 the scope of the search, I -- I don't think that Mr. Doty's
17 characterization of what we searched is -- is accurate in the
18 letter and also in this paragraph.

19 When the applicants interact with Werner, their
20 interaction -- their interaction is housed with Werner's -- in
21 Werner's recruiting database for emails and we searched the
22 recruiting base consistent with the search capabilities of our
23 internal system.

24 We have a recruiting application that allows us to search
25 by their social security number or their name, and we conducted

1 a search by either of those two search terms, and we cannot
2 otherwise search the database. And we were able to produce and
3 we did produce everything from that database for each of the
4 drivers.

5 We also searched -- in addition to -- to just the
6 recruiting database, we also searched the emails and we
7 searched using the name and email of -- of Deuschle and the
8 name of -- Mr. Deuschle and the name of Mr. Robinson.

9 After -- after we searched those, we -- we were able to
10 produce the information that we were able to find with those
11 searches. You know, a lot of -- of what's being contested here
12 in -- with -- with regard to paragraph one here is that there
13 aren't these general search terms being used. Well, in our
14 databases, our databases don't permit searches like that.
15 It's -- it's (indiscernible) on the search capabilities.

16 And then also for searching other information, not every
17 request requires an ESI search and not every place with storage
18 is capable of an ESI search. For example, request number 18
19 that is addressed here, it asks if we have any documents
20 related to a hearing standard, and we identified what our
21 hearing standard was and responded we don't otherwise have any
22 documents of a hearing standard. We don't -- there's --
23 there's -- there's no ESI search that needs to be done.

24 When there are other requests that are being asked of
25 Werner such as provide copies of your handbook, provide

1 personnel policies, provide simulator training documents, those
2 are known documents that we can ascertain and we know the
3 location and you go in there and you find where that document
4 is and you extract that document and you produce it in the
5 case.

6 You don't need to engage into an ESI search to -- to find
7 those documents. We don't have to search hearing exemption or
8 FMCSA exemption, sign language to get a lot of the documents
9 that are being asked for in their request of production.

10 With the discussion that we've had with counsel over the
11 past couple months about additional searching, we agreed that
12 we would -- or at least we offered to do additional --
13 additional searching. We searched another database, the HR
14 identity database in this case, that just produced two lines of
15 data that state these are applicants that applied here and
16 they're now -- well, it doesn't state that. It just states
17 that they've been registered into the system, and -- and
18 we've -- we've gone forward and -- and offered some additional
19 search terms that we're willing to do that our system is
20 capable of doing.

21 Of course, we haven't had any further discussion in
22 response to that last email that I had sent on July 17th. So
23 what we've -- we've done what -- what we're able to do with
24 the -- the searching that we have.

25 And what's important, I think, to note is that a lot of

1 these terms, there's, I don't know, 15 or so terms that -- that
2 are being suggested, and I don't see how there's any relation
3 to the audit trail data and why these terms are being suggested
4 based on what the audit trail data reveals.

5 The -- the whole thing that started this dispute, Judge,
6 goes back to the audit trail data.

7 THE COURT: Right.

8 MR. CRAINER: And -- and that is, you know, listed
9 pages of information that shows the -- electronic fingerprints
10 I think is how it's been described in court -- the electronic
11 fingerprints that show people accessing an application and it
12 provides limited comments and information about the -- the
13 applicants.

14 None of these terms that are suggested down here were
15 revealed in the audit trail data so that doesn't mean we'll --
16 you know, once we got this audit trail data we saw all these
17 terms being used and now we need to search these elsewhere.
18 None of these comes out of there: cochlear implant, death
19 waiver, FMCSA exemption.

20 So I'm not seeing how there's been any explanation from
21 the EEOC as to why these additional searches need to be done
22 based on the audit trail data. That's why we're here. It's
23 solely because of the audit trail data, and if the audit trail
24 data is being used as a springboard for doing more discovery,
25 there has to be some type of relation there and that showing

1 just hasn't been made, Judge.

2 So --

3 THE COURT: Well, here's --

4 MR. CRAINER: -- (indiscernible) --

5 THE COURT: -- here's the -- here's -- here's the
6 issue and then I'll let the -- you can respond and then I'll
7 let the plaintiff respond because I want to make sure that
8 we're all on the same page.

9 I realize this all started with the audit trail data, but
10 what that showed was and what the question was and what the
11 concern was from the plaintiff is that you did not do an
12 appropriate search for relevant documents, and this is what
13 brought that to their attention.

14 And it is that issue that gets you into the 30(b)(6) of
15 taking a deposition of somebody as to what you did and how you
16 did it and those sorts of things. And so when we had that
17 April hearing, they wanted me to order Werner to do a bunch of
18 things and to take a 30(b)(6) in regards to that and enter an
19 order, which I don't have in front of me right this second, but
20 to order Werner to do a lot of things in order to determine
21 whether you had produced the documents that you were required
22 to produce in discovery.

23 And I, on the other hand, because I did not -- because of
24 the cost that it could be to do that, at that time it was
25 unclear because I didn't know what the search terms were

1 whether Werner had searched and done what was required based on
2 the previous questions of discovery as well as the complaint in
3 this particular case.

4 So the audit trail data got us to our last hearing but
5 then I've been, for lack of a better word, doing it in pieces
6 rather than just ordering everything because at that point I
7 could not tell or did I know for sure until what was produced
8 in the additional discovery that was requested whether what
9 needed to be produced was produced based on Werner's search.

10 What we have now is that what Werner did is they searched
11 basically the defendant's name and an email address. That's
12 it. There was nothing else in regards to hearing, hard of
13 hearing, loss of hearing, et cetera which clearly this case
14 goes to Werner's policies and practices regarding
15 hearing-impaired truck drivers.

16 So I appreciate that, yeah, it was the additional
17 discovery of this audit trail data, but to say that we're
18 limited to that is not where we are is my recollection of
19 what -- what I ordered because I'm doing it in pieces because I
20 didn't know what there was or what would be appropriate to
21 order Werner to do because we didn't have that information
22 which we now do, and that's why I think we're having these
23 discussions.

24 So, Mr. Crainer, do you dispute or want to clarify that
25 that's really the issue -- the issues that came out of the

1 April 2020 hearing that we had or telephone conference that we
2 had?

3 MR. CRAINER: Sure. Well, as -- as -- as I
4 understand it, we -- from that conference -- after that
5 conference it was -- it was decided that we would reveal the
6 search terms that were used which we did. We sent a letter to
7 counsel, they disagreed that we gave enough information so we
8 sent another letter to counsel identifying the terms that were
9 used, identifying the search capabilities of the system and why
10 we searched what we searched, and then also why we didn't
11 necessarily need to use ESI to search for -- for other
12 information.

13 So that was one part of what came out of that hearing, and
14 then the second part that came out of it was they had asked --
15 served discovery requests on what information was contained in
16 the audit trail data.

17 THE COURT: Right.

18 MR. CRAINER: They served interrogatories and they
19 served requests for production in both -- both cases. They
20 asked about -- about -- there's -- there's 328 lines in
21 Robinson they asked about and asked us to explain what that is
22 and there are 48 lines in Deuschle's audit trail data that they
23 asked about.

24 We responded to each line item and stated whether there
25 are any documents for each line item. In every instance where

1 there was a document, we produced that document and we cited
2 the Bates stamp where it was produced because it had already --
3 it had already been produced in the case.

4 So the -- the documents that are being referenced in that
5 audit trail data, we already explained through their production
6 and were able to cite where those were. In instances where
7 there was no document or nothing to search or nothing to find
8 from the audit trail data, we -- we explained what that was.

9 I know the EEOC takes -- takes issue with some of the
10 terminology that's used in the audit trail data like item and
11 message and, unfortunately, that's -- that doesn't refer to an
12 actual document. This is an application that was created by
13 Werner's IT department several years ago. The programmers
14 chose to designate certain categories and actions as -- as they
15 saw fit, and we explained that in our discovery responses why
16 there aren't any other documents to -- to produce, much less
17 search for because it's not referencing a -- a specific
18 document.

19 I know later on the EEOC takes issue that it's not under
20 oath but of course, it was an RFP so it -- it wasn't done under
21 oath. If there's an interrogatory, we would certainly give the
22 exact same response.

23 So what -- what came out of -- of -- of that conference is
24 those two tracks; disclosing to them the search terms that were
25 done and disclosing where we got certain information and why

1 ESI didn't have to be done because we knew where the certain
2 target information was; and then also we searched -- we -- we
3 responded to the written discovery requests.

4 So that's -- that's my understanding of where we're at
5 and -- and -- and how we've come to, I guess, the -- the -- the
6 current situation, and I'm not -- where -- where my
7 disagreement lies with doing these additional terms, searching
8 these additional terms is that what request or production
9 specifically -- where has it been explained what request
10 requires these additional searches and what the EEOC believes
11 is missing or believes should have been searched based on -- on
12 what's been disclosed, and -- and -- and I don't think that's
13 been established, Judge.

14 THE COURT: Well, can you explain -- and I realize
15 you didn't start this case -- is there some reason that some of
16 these terms weren't searched when this is what this case is all
17 about?

18 MR. CRAINER: Sure. Judge, with -- so with regard to
19 the applications, the -- the recruiting application that we
20 have, it's -- it's just limited in how we can search. We can't
21 search a -- a -- a term like deaf or hard of hearing in there.
22 So that's -- that's one reason.

23 And as for other requests, requests that ask for our
24 handbooks that -- you know, provide us all handbooks that you
25 have that apply to drivers. Well, we didn't do a search for,

1 you know, all -- all the policies are -- that are contained in
2 that handbook because we know where that handbook is so we went
3 and we grabbed the handbook from 2015, '16, '17, '18 and -- and
4 we produced them so there wouldn't be a need to do a search.

5 So that's why some of these search terms aren't necessary,
6 if any of them, because it's not -- it -- the request didn't
7 ask for those documents that required us to do an ESI.

8 THE COURT: Well, just looking at number 1 -- and I
9 agree. I mean, if you have a handbook, you know where to go
10 and find that. You don't need to necessarily do an ESI search
11 for that. I get that. But even within number 1, one of what
12 they have requested is all documents concerning the hiring,
13 training, employing and/or safety of drivers who are deaf, hard
14 of hearing and/or possess a hearing exemption, and it's saying
15 all documents.

16 So hypothetically you could have whatever your policy is
17 in regards to that, but then are there emails or anything else
18 in regards to people who are hard of hearing or situations --
19 I'm just using that as an example. So it would seem to me
20 hypothetically that within the email database that that -- that
21 those terms maybe should be searched. Thoughts, comments?

22 MR. CRAINER: Judge, on -- on that I -- what we've
23 done in producing our responses, we -- we produced all the --
24 the documents that we believed to be relevant to that, all
25 documents concerning hiring and training, and then when you're

1 looking at some of these terms, Werner has over -- as of 2018
2 12,400 employees. The search of the emails is -- is a global
3 search of all emails, and if -- if we search a term like deaf
4 or hard of hearing or hearing, the amount of results that are
5 likely to come up, I -- I -- I -- I just think would -- would
6 be an astronomical number and then --

7 THE COURT: Why --

8 MR. CRAINER: -- in terms of (indiscernible) --

9 THE COURT: Let me ask you that. Why do you say
10 that? Because hard of hearing or deaf, as I understand it, you
11 don't have any drivers who are deaf. I don't know if you have
12 any that are hard of hearing. I don't know that you have any
13 employees that are so I guess I -- I'm not sure there would be
14 thousands of emails. I don't know.

15 MR. CRAINER: Well, Judge, we -- we do and we've
16 disclosed in this case we do have drivers that are hard of
17 hearing. We -- we've recently disclosed another one or at
18 least that has an exemption and -- and we also have non-driving
19 employees that have some form of -- of hearing disability so I
20 know those certainly exist.

21 You know, one -- one of the things that's targeted here
22 is -- is asking about FMCSA exemptions and -- and how Werner --
23 what documents that Werner has regarding applicants that have
24 an FMCSA exemption and how that's been handled and addressed.

25 Well, in this case the EEOC and Intervenor asked us to

1 search a list of 4- to 500 names -- actually -- well, I think
2 it might have been up to 700, but we've searched several
3 hundred names of people that are on the FMCSA exemption list.
4 So we went through and instead of just searching FMCSA or
5 exemption or waiver, we asked can you give us the names of
6 everyone on that list.

7 We then searched everyone on that list and then we
8 produced all the documents from people that had applied to
9 Werner that we were able to find in our system. So there's --
10 there's other ways of going around that information and -- and
11 we've gone and done that for the EEOC and intervenor and
12 produced that information.

13 THE COURT: Okay. And tell me -- and before I get
14 back to the plaintiff -- what -- so for example in the
15 recruiting database, as I understand what you're saying is it's
16 very limited as to what searches you can do. Is that what
17 you're saying?

18 MR. CRAINER: Correct. There's -- there's two ways
19 to do it. You can search by social security number and -- and
20 name.

21 THE COURT: Okay. Well, and while we're on this
22 subject, because one of the other things that the EEOC is
23 asking is for Werner to identify all of their databases and
24 they may have said by name but it makes sense in what you --
25 Werner has said is that we give you the name and you're not

1 going to know what that means, but it sounds like you have
2 different databases for different things such as recruiting or
3 safety or email, whatever, and that -- so if -- I -- I guess my
4 question is -- and I get it.

5 If -- if I'm going to order -- order that you don't have
6 to do anything else, then why do you need to give the
7 databases. I get that. But if we -- but if I am going to rule
8 and say they get something, what is the issue with identifying
9 the databases because as you've said it does not make sense to
10 search 400 or I think you said you had -- in your submission
11 like 400 databases, and it doesn't seem to me that there's
12 going to be anything in, you know, account receivables, if
13 that's a database. There's not going to be anything in that in
14 relationship to this case potentially.

15 So in order to ease and to make sure and I guess for
16 EEOC's understanding of what you've searched and which
17 databases you've searched and -- I mean, unless they know the
18 databases, they don't -- you don't know or they could not
19 question whether the information they're looking for is
20 somewhere other than what you have searched.

21 So that's my que- -- so that's my other question to you as
22 to listing the databases.

23 MR. CRAINER: Sure. So there -- there's a -- there's
24 a couple things to that, Judge. First, we've -- we've -- we've
25 represented to them that these drivers had limited interaction

1 as just applicants. They never got past the applicant stage.
2 And we've said their interaction would have been in the
3 recruiting database.

4 We said the other application -- or the other databases
5 would be the HR identity database which that literally just is
6 an internal thing that shows that they had been added to the
7 system, that the driver name is added to the system. There's
8 just two simple lines.

9 We -- and then we've offered to similarly search the
10 safety database and -- and that would be -- potentially be one
11 of the other database because there was a safety -- there's an
12 individual, Jaime Maus, that works for Werner that was involved
13 with one of the cases so we agreed, okay, we would search
14 the -- the safety database.

15 Giving a list of all the databases, as -- as -- as you
16 recognize, they wouldn't even be able to -- to tell the name
17 from some of them because some of the names are a couple
18 letters, an abbreviation, that it's not clear from it -- you
19 know, recruiting is quite clear but other ones don't have such
20 a clear description of what the database is. So that would
21 then require us -- which I don't think is required under the
22 rules -- to then create a document that goes through each of
23 these databases and defines then or describes what the database
24 is, and I don't think that's necessary.

25 And -- and, again, the stated need for why they need the

1 database is so they can develop search terms, but as we've seen
2 here at the end of number 1, there's, I don't know, around 15
3 to 20 search terms that they were able to identify, they've
4 previously been able to identify search terms in our
5 correspondence as of the last couple months, and -- and I -- I
6 don't think that they need the databases to start coming up
7 with search terms.

8 If there's an interrogatory that they ask that said, you
9 know, where -- where are these databases or what databases
10 would -- would contain information that would be held if you
11 have an applicant, we're able to answer that and we can answer
12 it's the HR identity, it's the recruiting database. Those
13 would have been the databases. I -- I don't think we need to
14 get into the other databases.

15 THE COURT: Okay. Mr. Doty, you want to respond?

16 MR. DOTY: Yeah, there's a few things I'd like to
17 respond to. On the last point that Mr. Crainer made which is
18 they offered to look in the safety database because of this
19 particular person, Miss Jaime Maus, who we deposed both as an
20 individual and as part of the 30(b)(6), and we would like to --
21 you know, to redepose her.

22 Their offer to search the database was limited to a single
23 term and that is the social security number, singular, just the
24 social security number of those two people. And we do know
25 that Miss Maus did what -- what I think Werner has

1 characterized as the interactive process with Mr. Robinson when
2 Mr. Robinson applied and sought to be employed and they said,
3 well, we want to see if we can train you and had a -- had a
4 meeting with them.

5 If you think about just -- they're not even willing to
6 search Mr. Deuschle and Mr. Robinson's name within that safety
7 database or hearing within the safety database. They're
8 willing to search, you know, the social security number.

9 And I just think if you just sort of listen to this
10 discussion, you know, which has now been going on for 30
11 minutes, this is the problem that we've had in our -- our --
12 our discussions with -- with -- with Werner to try to reach an
13 agreement on this.

14 We -- we do not take Mr. Crainer or in the last conference
15 Miss Culhane's assertions regarding what can or can't be done
16 with these databases like, you know, these terms can't be
17 searched, we can only do names and social security numbers, we
18 do not take those unquestionably and -- and we don't think the
19 Court should either.

20 You know, they've represented other things regarding
21 the -- the -- the routing -- the routing slip which we've now
22 learned are not true. And I'm not saying that Miss Culhane --
23 Miss Culhane and -- and Mr. Crainer are -- are lying to us, but
24 they're just not the people who can answer these questions.

25 And our reason for wanting to know the databases is all

1 along so that we don't have to search 400 databases. I mean,
2 you know, Mr. East was on -- on this conversation where we
3 said, well, just tell us the databases so that we don't have to
4 search 400. We don't need to search your inventory of trucks
5 or your income or your -- you know, your budget issues.

6 We just want to know which ones might be implicated so
7 that we can ask -- search these, say, 15 terms that we have
8 listed in number 1 in a way that's very focused, and -- and --
9 and we've -- we've identified a couple here.

10 I mean, we now think safety's probably something that
11 should have been searched and hasn't been. Training should
12 have been searched but -- but -- but hasn't been. And we now
13 know that there's the -- the legal database, the -- the
14 in-house legal counsel which I know is one of our subsequent
15 issues.

16 And that's the only reason we want to know these databases
17 is so that we can say to them, you're right, we don't need --
18 we don't need to search 380 of them but we do want to search
19 these 20 because they're implicated, and I think their failure
20 to provide those -- that thing is -- is -- is -- really it
21 harms them because I think the correct order in the absence of
22 them identifying what those 400 are is a order from you saying
23 then search all of them. Fine, if you're not going to tell us
24 what they are, then you just search all of these databases for
25 all of these very relevant terms that are relevant for the

1 EEOC's lawsuit. So that's our -- that's our position.

2 THE COURT: All right. And, Mr. Doty, back to one of
3 the questions that I asked the EEOC which has to do --
4 obviously, this all started with the production of the audit
5 trail data that occurred and the -- the phone conversation that
6 we had in April, but it is -- is it your recollection that what
7 I did is instead of doing what you asked me to do and order
8 everything you wanted, I did it in stages and we needed to know
9 the search terms because we didn't know -- 'cause it was
10 possible if they searched everything, then there isn't anything
11 else and there wasn't anything else to do.

12 MR. DOTY: That's correct. No, we -- we see this
13 really -- and why -- the way we characterized this, we only
14 want what we are entitled to and asked for back in March of
15 2019.

16 THE COURT: Okay.

17 MR. DOTY: And -- and we didn't learn that -- the
18 inadequacy of that particular search until your order --

19 THE COURT: Right.

20 MR. DOTY: -- in April which ordered them to produce
21 their search terms, and now we've realized how inadequate they
22 were and we should have got those. And for this court to make
23 an -- a reasonable decision on the merits, we need to have the
24 facts and we -- we now -- we now know we don't have those facts
25 because of what we think was an inadequate ESI search by -- by

1 Werner.

2 THE COURT: All right. Before I get to the search
3 terms on number 1, on the end of number 2, it looks like what
4 you're asking is that they should be ordered to do an ESI
5 search of other databases where documents regarding training,
6 employing and/or safety as well as documents about drivers who
7 are deaf, hard of hearing and exemptions may reside.

8 Does anybody want to say anything on that? I don't know
9 that we talked about that specifically.

10 MR. CRAINER: Judge, well, with -- with regard to
11 doing a keyword search, the -- the -- the databases aren't
12 capable of doing keyword searches. So (inaudible) --

13 THE COURT: So how do you find anything in the
14 databases then? How do you find something then?

15 MR. CRAINER: It's -- it's -- it's stored using their
16 social security number or their name. And going back to the
17 safety database discussion, we offered either name or social
18 security but that's because that's what it's limited to. These
19 databases are -- are -- are limited in their searching
20 capability.

21 THE COURT: Well, so let me ask you --

22 MR. CRAINER: They're not --

23 THE COURT: Hold -- hold on. So let me ask you a
24 question. So obviously you're being sued, you're being sued
25 about policies and practices dealing with -- I mean, obviously,

1 these drivers but then your policy and practice in general on
2 how you deal with people who are hard of hearing and deaf.

3 So let's say hypothetically you have the recruiting
4 database which would provide information as to individuals who
5 maybe had applied who were deaf, hard of hearing and you didn't
6 hire them, and maybe that's all the information that's --
7 that's in there, but clearly they would be entitled to that
8 information in regards to this case in order to see how you're
9 handling the hiring or not hiring of people with -- as truck
10 drivers who have hearing impairment issues.

11 So it does not seem to me that you can just say we can't
12 search it because they're entitled to that information and you
13 have an obligation to provide it. So how do you get it then?

14 MR. CRAINER: Judge, it's -- it's doing a different
15 search that we did by searching the names of FMCSA exemption
16 holders and -- and that's what we produced.

17 So if you're looking for documents about the hiring and
18 firing of -- of -- of drivers that are deaf or have a hearing
19 exemption, we did that search by extracting the list that -- a
20 list was provided to us from the Federal Register that
21 identified all the exemption holders.

22 And be- -- because our system is limited, we said, okay,
23 if you give us that list, we'll search the names. And we
24 searched names and then we produced all those documents that
25 showed if there were -- if they applied and if -- if it was

1 accepted or denied, and we -- we were able to give the
2 information in that way. So they -- the EEOC and the
3 intervenor have that information.

4 And then with regard to the -- the policies, we produced
5 the hiring guidelines that we have. We produced several
6 versions --

7 THE COURT: Sure.

8 MR. CRAINER: -- of hiring guidelines. Those --
9 those, in fact, were even used during depositions so we've --
10 we've -- we've given those documents over already.

11 MR. DOTY: Your Honor, just -- I -- I -- I believe
12 Mr. Crainer is only talking about the recruiting database and
13 the ability to search the names and social security numbers
14 'cause we have discussed in our conferences about searching
15 other terms in other databases, and they're not so limited.

16 And, again, the Court should not take Mr. Crainer's
17 representations here. Again, I absolutely a hundred percent
18 believe -- and -- and -- and to the extent that this Court has
19 a question about it, I believe the 30(b)(6) deposition can
20 go -- can address this issue and we can ask the tech -- the
21 technological people whether or not a term such as deaf
22 exemption can be searched in other databases. I -- I -- I'd
23 absolutely be shocked if the answer was no. I mean, this is --
24 this is -- this is 2020.

25 And I -- and I hope, you know, that Mr. Crainer's

1 representation about the recruiting database which may have --
2 because it's about individuals and the search of those
3 individuals' social security and names is not the same thing
4 for the safety database, and it's not the same thing for the
5 training database, and it's not the same thing for the legal
6 database.

7 I mean, you tell me the people in the -- the in-house
8 legal counsel can only search for documents by social security
9 and name. That's just not true. Absolutely patently false.

10 THE COURT: Mr. Crainer -- and obviously, I had
11 referenced the -- the recruiting database. What about the
12 other databases? I mean, are you -- 'cause it -- you seem to
13 imply that some are limited and I don't know if others aren't
14 but...

15 MR. CRAINER: Sure, Judge. As -- as an initial
16 matter, I -- I take exception to the fact that the integrity
17 of -- of both myself and -- and Miss Culhane are being
18 challenged here and -- and for some reason that we've been
19 untruthful in this case which certainly is -- is -- is not the
20 case whatsoever.

21 With regard to the -- the databases, there -- so Mr. Doty
22 is -- is -- is identifying databases that don't exist. And in
23 talking about databases and search capabilities, we -- with
24 regard to the recruiting database, the -- the safety database
25 and the state of the -- the other 400 databases, those are --

1 are -- are limited in -- in what can be searched.

2 With regard to where other documents are -- are obtained,
3 you know, when we're looking and grabbing handbooks and we're
4 getting those from our legal counsel, she's getting those
5 from -- from her file folder so that's -- that's where that
6 information's being obtained. It's the benefits information.
7 That's -- that's how that information's being obtained.

8 There's -- I don't see the need for doing an ESI search
9 for those when we're -- we're already obtaining those documents
10 and producing those documents.

11 THE COURT: Well, and here's what I would say. I
12 don't -- I mean, if they're asking for a handbook and you've
13 produced that handbook, I'm not concerned with you going in and
14 doing an ESI search for that unless -- I mean, Mr. Doty, do you
15 find that to be necessary for some reason?

16 MR. DOTY: No. No. When we ask for a specific
17 document, that's -- that is correct. But when we say we want
18 all documents regarding hearing, they can't just produce a -- a
19 statement that says see this Federal Register entry. We expect
20 a search.

21 THE COURT: Well, and so it appears to the Court and
22 as Mr. Doty has stated, we're dealing with the request for
23 discovery that occurred in March of 2019 and what was
24 requested. That based on the nature of this suit and those
25 requested, the -- the search terms that Werner has used were

1 not sufficient so additional search terms need to be done.

2 My -- So -- and -- and I'll be honest, I don't know that
3 these -- that the parties can agree. I do not think that --
4 I'm going to say two things so just sit tight. That the -- the
5 request of EEOC and what they were requesting for those search
6 terms I do not think are out of line.

7 My only concern is it sounds like some of these databases
8 are, for lack of a better word, I'm going to say old because I
9 do think we're in 2020. It's a little hard for me to imagine
10 that they can't be searched in some way but maybe it's limited
11 and it's based on the way that it was done and -- and it just
12 hasn't been updated. I don't know.

13 So having said that, you know, for example, when you do
14 search terms and trying to have dashes, sometimes that doesn't
15 work, etc. So I -- I -- I -- I do think there needs to be some
16 communication as to what the databases capabilities are which
17 get me back to whether a 30(b)(6) with the people that can
18 answer questions about the databases and what can be searched
19 and what cannot be searched should be done prior to the
20 searches being done.

21 So I want you all to think about that because we need to
22 think how -- how to time frame this. So I think additional
23 search terms need to be done. I do think -- and -- and that
24 kind of goes to number 2 'cause that talks about the databases
25 regarding other documents so -- and -- and there may be -- and

1 I don't disagree that there may be other databases to be
2 searched but here's where we are.

3 I don't know what they are. And I realize Werner doesn't
4 see the need for it, but it is as Mr. Doty just stated. I'm
5 going to order you to search the databases with these
6 additional terms, and if the plaintiffs don't know what the
7 databases are, then everything's going to have to be searched
8 which makes no sense, to be quite honest, so it seems to me
9 that Werner needs to identify the databases, the type of
10 documents that are within that database so then EEO- -- that
11 the plaintiff can indicate which databases they think need to
12 be searched for those documents.

13 Obviously, if there's an argument about that, then I'm
14 going to hear from you and we'll talk again in regards to that,
15 but that at this point in this litigation is the only way to
16 determine whether the appropriate databases have been searched
17 in regards to the search terms necessary to find the documents
18 that the plaintiffs are entitled to based on their requests for
19 discovery.

20 MR. DOTY: Thank you, Your Honor.

21 THE COURT: So I think that takes care of 1, 2 and 3.

22 Four has to do with in-house counsel's electronic file.
23 I'll be honest with you. I'm not -- I could not exactly follow
24 this. I'm not sure -- so I need EEOC -- I know that there
25 are -- that there were some requests and that's a response.

1 So I guess, Mr. Doty, can you explain this a little bit
2 more to me and exactly what you want and why you want it.

3 MR. DOTY: Yes, Your Honor.

4 So in the letter that Mr. Crainer sent us on June 1st, and
5 that is Exhibit 3 to what we sent you --

6 THE COURT: Mm-hmm.

7 MR. DOTY: -- and that lists all of the database and
8 search terms that they give, they do identify a -- a number
9 of (indiscernible) --

10 THE COURT: In-house files?

11 MR. DOTY: Right. In the location column that they
12 found the documents in the in-house counsel file. So it's
13 our -- our -- our understanding and belief that when these two
14 charging parties filed a claim with the EEOC that legal counsel
15 goes and collects all the documents that are relevant here
16 and -- and puts -- and then move -- either -- either moves them
17 or copies them to the in-house counsel file.

18 And so we think that is a -- a -- a very simple way to get
19 documents to which we are entitled. We're not seeking
20 privileged documents but we also don't believe that the mere
21 residing on the in-house counsel file makes a document
22 privileged, and so we think -- you know, this case is -- these
23 cases are old, and we think that the -- the timeliness of the
24 charge and the fact that in-house counsel would have collected
25 this information and put it in their in-house counsel file

1 is -- is something the Court should order them to do.

2 Search and then when -- when any of these documents come
3 up, you know, either produce them 'cause they're not privileged
4 or make a privilege log on why they can't produce them.

5 THE COURT: Mr. Crainer.

6 MR. DOTY: So (inaudible).

7 THE COURT: Sorry. Oh, I'm sorry, Mr. Doty. Are you
8 not -- sorry.

9 MR. DOTY: No, no, I -- I'm done. No, I'm done, Your
10 Honor.

11 THE COURT: Okay. Mr. Crainer.

12 MR. CRAINER: Judge, I'm -- I'm not entirely sure on
13 what Mr. Doty is asking for us to search and -- and what needs
14 to be searched in in-house counsel's file. One -- you know,
15 one of the things that they asked for was all -- you know, the
16 communication with the EEOC so we -- we produced that
17 information.

18 You know, they've asked about, you know, what our position
19 statement was and we produced that so I -- I'm not clear on
20 what we need to search in our in-house counsel's file.

21 MR. DOTY: The same --

22 THE COURT: Well --

23 MR. DOTY: The same -- the same terms. The same
24 terms that we're seeking: deaf, hard of hearing, hearing
25 exemption. I mean, EEOC -- EEOC raised this issue of the need

1 for -- for Werner to train deaf drivers to comply with the ADA.
2 That was raised -- I mean -- I mean, it was raised during the
3 investigation and conciliation so we believe those documents
4 probably do reside there.

5 We're not asking them to make extra documents. We just
6 think this is -- that this is a collection place where they've
7 put them and -- and that they should be -- search the exact
8 same terms.

9 THE COURT: Well, but --

10 MR. DOTY: (Indiscernible.)

11 THE COURT: Hold on, hold on, hold on. What you
12 originally asked for was just them to search the term of
13 Deuschle and Robinson -- I don't know if I'm saying that right,
14 Deuschle -- but Deuschle and Robinson, and they -- because what
15 you were asking for or the reference to in-house counsel's
16 electronic file is all documents that refer to the EEOC charge
17 of Deuschle and then Robinson so -- for an example, and then it
18 says, you know, see May 6th letter and additionally Werner's
19 in-house counsel's electronic file.

20 So I guess first -- so it seems -- because here's --
21 here's the situation. It is in-house counsel. I completely
22 understand that does not make everything privilege, but if
23 you're going outside the two defendants in this case for
24 in-house counsel, then I think we're in a different area, and
25 this court is not comfortable ordering a blanket, oh, just

1 search deaf and you can get everything out of in-house counsel
2 on anything he or she has ever done. That's a different issue
3 than -- than they've indicated these are where the documents
4 are.

5 And then I guess my one question to Werner is in your
6 response it says: See May 6th letter and additionally Werner's
7 in-house counsel files, and -- and, obviously, that's the
8 location where those came from. So I'm assuming you were just
9 listing this is where we found this information, not, oh, we've
10 produced this whole file to you already, right? Or...

11 MR. CRAINER: Exactly, Judge. And -- and they asked
12 for where the location was where we got it and that's exactly
13 where we were able to obtain the information from.

14 THE COURT: So to clarify from EEOC, for this issue,
15 are you at this point just looking for the Court to order a
16 search for -- in in-house counsel of the term Deuschle and
17 Robinson and not all of the other search terms that we
18 previously talked about?

19 MR. DOTY: Well, we -- we were thinking -- we were
20 thinking all -- all of the terms. And our -- yeah, and our --
21 and our position has been that their complaint is that it's a
22 wide search to search these other databases, and our view was
23 one way to help narrow it down, in addition to doing maybe
24 training and the safety database, is -- is also search the
25 in-house counsel database and see what documents come out

1 because the assumption is, is that these documents may have
2 been collected so that -- it was our attempt to make the search
3 less burdensome.

4 THE COURT: Well, that -- that may be in the end, but
5 let me ask a question of Werner. Do you know if the search for
6 Robinson and Deuschle have been done as to in-house counsel and
7 whatever documents that are not privileged have been disclosed
8 and those that are privileged that a privilege log has been
9 done?

10 MR. CRAINER: Yes, Judge, certainly. That -- that --
11 that is the case. And, you know, in-house counsel has
12 whatever -- however she -- she -- she's kept her file on -- on
13 each one for Robinson and -- and Deuschle and we've produced
14 those documents and any documents that weren't produced were
15 noted on a privilege log.

16 MS. CULHANE: And, obviously, Judge, with the
17 exception that communications that we have had with in-house
18 counsel since this lawsuit started are not included on the
19 privilege log.

20 THE COURT: Right.

21 MS. CULHANE: (Indiscernible.)

22 THE COURT: And has EEOC gotten a privilege log from
23 Werner?

24 MR. CRAINER: Yes.

25 THE COURT: Okay.

1 MR. DOTY: Have we? Okay.

2 THE COURT: Okay.

3 MR. DOTY: I -- I -- I'm not sure. I mean, I -- I'll
4 have to look. I don't -- I don't doubt what they've said but
5 I -- I don't recollect it right now.

6 THE COURT: Okay. All right. As to number 4, at
7 this time -- and I'm not saying EEOC cannot come back depending
8 on what they find but as of right now, I'm not going to grant
9 4. And you can double-check the privilege log -- EEOC, you can
10 double-check the privilege log.

11 If you have a concern based on looking at that that maybe
12 things have not been produced out of the in-house counsel's
13 file, we can talk about that further at a -- at a different
14 time, and depending on the information that you receive from
15 the searches that are going to be conducted -- well, I'll just
16 tell you, I have great concerns of doing a blanket search of
17 in-house counsel of all of their files, and I realize that this
18 goes beyond just these two defendants but I'm not ready to go
19 there yet depending -- but -- now -- but what I will say is
20 depending on what is found or discovered in any of the other
21 searches that occur, then that may be something we have to talk
22 about down the road but at this point I'm not -- I'm -- I'm
23 going to deny 4 at this time.

24 All right. Number 5, and I think, Mr. Crainer, you
25 already mentioned this or...

1 As I understand it, these items and messages that were on
2 the RCD is -- the -- for lack of a better word, when somebody
3 makes an entry and let's say the file goes to someone else or
4 does something, that's the entry that is made but there's no
5 document attached to it.

6 Is that -- do I have a correct understanding of that?

7 MR. CRAINER: Exactly. Exactly, Judge. It's -- it's
8 just an electronic fingerprint that just shows action being
9 taken.

10 THE COURT: And I -- and I take it that the plaintiff
11 is concerned of whether that's accurate or not and, therefore,
12 within the 30(b)(6) you want to talk about it and find out?

13 MR. DOTY: Yes, Your Honor. Yeah. An example would
14 be -- and -- and I -- I don't have a specific line that I can
15 show you but one of the things they talk about is that, you
16 know, the message on an item is -- is -- is just something that
17 happens when someone logs onto the system and does something
18 with that file, and yet, we found in one of the two that there
19 were, like, 15 entry lines before that point meaning --

20 THE COURT: Right.

21 MR. DOTY: -- if -- if what they say is accurate,
22 and, again, it's not under oath that we're getting these
23 responses, these are responses for requests for production, and
24 we'd like to have someone who's an expert that we can put under
25 oath and ask. If that's the case, then why -- why wasn't an

1 item created, you know, 15 entries ago when the first action
2 was taken. So there -- there's just questions.

3 And we're not asking the Court to resolve those questions.
4 We just need the correct place to do that if -- not in sort of,
5 you know, dueling position statements --

6 THE COURT: Right.

7 MR. DOTY: -- with the Court. Let's -- let's --
8 let's depose the expert who can tell us that, yeah --

9 THE COURT: Does Werner have a --

10 MR. DOTY: -- (indiscernible).

11 THE COURT: -- problem with that?

12 MR. CRAINER: Yes, Judge. We -- we have no general
13 issue with the subject matter being discussed. We just haven't
14 received a 30(b)(6) notice -- a 30(b)(6) notice that -- that
15 designates the topics.

16 THE COURT: Okay. Which then goes into -- so based
17 on everything that's happened, I think 5 and that request to do
18 that would be appropriate to find out whether there's
19 documents, not documents and kind of what all of that means.

20 But then 6 goes back to their original 30(b)(6) topics
21 which when we discussed this back in, I believe, April, I was
22 concerned whether all of those items were relevant and some may
23 not have been, and, again, it was a situation we didn't know
24 kind of what and how the searches were conducted.

25 So now that we know that, it's my understanding that you

1 have cut this down to basically five topics which is items 6, 7
2 and 8 and then -- so 6, charging parties' applications to
3 defendant's employment, defendant's communications with
4 charging parties. Is that -- am I on the right document?

5 MR. DOTY: Yes -- yes, Your Honor, you are.

6 THE COURT: Okay. And then defendant's refusal to
7 hire the charging party. So 6, 7 and 8 and then 39 and 40.

8 So does Werner have any problem with the 30(b)(6) on those
9 five topics plus the RCD and talking about that and what those
10 messages -- whether there's documentation along the lines with
11 those messages and what those items and messages mean?

12 MR. CRAINER: Certainly, Judge. With -- with regard
13 to the topics that are being identified or reidentified in the
14 30(b)(6), 6, 7, 8, 39 and 40, those were already explored in
15 the prior 30(b)(6) depositions with documents that were already
16 produced that, you know, provided the information that the
17 audit trail data already shows, and the audit trail data, which
18 is being used as a springboard to -- to review these topics,
19 the audit trail data doesn't speak to Deuschle's and Robinson's
20 application and -- and refusing to hire them and those tacks.

21 I mean, there's -- there's -- there's no relation between
22 what is shown in the audit trail data and -- and what's being
23 reexplored again that has already been taken care of in a
24 30(b)(6) deposition.

25 I mean, there were I think upwards of -- of -- of 12 hours

1 of -- of 30(b)(6) deposition or -- or just depositions on these
2 topics already.

3 THE COURT: Well, as to 6, 7 and 8, have -- has there
4 been a 30(b)(6) in regards to those already and, if so, why do
5 you want to do it again?

6 MR. DOTY: Well, Your Honor, the issue is that we now
7 have the audit trail data. For example, in the 30(b)(6)
8 deposition, we asked Miss Maus, who was one of their designees,
9 and we asked Mr. Hollenbeck, who was the other designee, about,
10 you know, their -- just for example their particular role in --
11 in -- in analyzing the application or their communications.

12 Miss Maus talked to Mr. Robinson. There would be the
13 communication. And they -- they gave us their answers. But
14 had we had the routing comment document, we could have then
15 said, well, you have this extra entry where you didn't talk
16 about the day -- the next day when you did something on the
17 file, and we -- how -- you know, 12 hours -- the problem is --
18 they're absolutely right.

19 We did 12 hours of depositions that frankly were a waste
20 of time because they didn't give us the documents that we could
21 have used to make it very efficient in saying, okay, great, you
22 talked to Mr. Deuschle on this day, why did you take this
23 action the following day, and -- and now they're basically
24 saying, well, you've explored it, I know you didn't have all
25 the data when you did explore it, but your time's up.

1 And so these five topics are all precisely on topic with
2 what their routing -- routing comment document provides.

3 MS. CULHANE: Judge, this is Liz Culhane.

4 MR. DOTY: Every one of them.

5 MS. CULHANE: I apologize. Judge, could I respond
6 real briefly? This is Liz Culhane.

7 THE COURT: You may.

8 MS. CULHANE: Thank you.

9 Judge, for example, topic number 6 that Mr. Doty has
10 identified as one he wants to redo talks about the
11 applications -- Werner's applications that were filled out by
12 Mr. Deuschle and Mr. Robinson. We do not understand how
13 anything that is contained in these couple hundred lines of
14 audit trail data which comprises in total 16 pages, the vast
15 majority of which is -- occurred after this as redacted just
16 entries, you know, like updated to server, you know. We don't
17 understand how anything in the audit trail data bears on the
18 contents of Werner's written applications, topic 6, okay?

19 Topics 39 or 40 talks about Werner's retention policies
20 for its HR -- I think it's HR documents like applications. We
21 don't understand how anything in the contents of the audit
22 trail data, which just shows who touched Mr. Deuschle's online
23 file and when, bears on the retention policies for Werner's HR
24 department.

25 So other than the fact that he's -- he said that he can go

1 line by line through the audit trail data and say, you know,
2 why was Mr. Deuschle's application uploaded to Werner's
3 internal server at this date, we don't understand how the
4 contents of that data actually bears on the topics that he's
5 identified, all of which were already the subject of a
6 deposition.

7 And -- and to Mis- -- you know, it's kind of incredible to
8 me that a deposition that is 12 hours long, now Mr. Doty takes
9 the position that that was worthless based on a -- a couple of
10 pages of data that was produced later when as we talked about
11 at the last hearing, the vast majority of the information in
12 that document and almost all the people identified in there
13 other than a few admins were identified before those depos were
14 taken and -- and were discussed at length with the Werner
15 witnesses.

16 So we do not agree that the deposition topics that he's
17 identified have -- have any relation to the audit trail data
18 and require the Court to reopen testimony on those topics.

19 MR. DOTY: Yes. Look at 39. The topic is the
20 systems that Defendants use to create, duplicate, maintain and
21 store information on their applicants and employees including
22 search capabilities. That is the audit trail data.

23 We couldn't even ask them a question about it. I mean,
24 how do they track it? Well, the answer we now know is they
25 have this audit trail data that lists specifically what was

1 done during the entire application process. That's topic 39.

2 And if we can't open that up again -- we -- we couldn't
3 ask -- we didn't ask a single question about the audit trail
4 data because we didn't know it existed. And 40, the retention
5 policy for those documents.

6 And so one of the things that we've raised in that issue
7 of the -- the -- the audit trail data is -- it says, you know,
8 document uploaded. Okay. So we want to know where is that
9 document uploaded and where could we as the EEOC point the --
10 Werner to -- to produce it, and if the answer is, well, yeah,
11 you know, we actually upload it but we delete it after two
12 years, that's the retention policy, and, again, we couldn't ask
13 those questions 'cause we didn't have the audit trail data in
14 front of us.

15 These are five very narrowly focused that put -- are
16 exactly on point with the audit trail data.

17 THE COURT: And I -- I think you are entitled to do
18 the 30(b)(6) on the audit trail data. I think you're entitled
19 to that and 39 and 40 as it relates to that I think you should
20 be able to do.

21 Now, my question, though, is coming back to 6, 7 and 8
22 explain to me how that would relate to the audit trail data.

23 MR. DOTY: Well, the audit trail data, Your Honor,
24 says what individuals kind of touched the file and took certain
25 actions.

1 THE COURT: Right.

2 MR. DOTY: And -- and throughout those documents
3 include reference to Mr. Hollenbeck and Mrs. -- Miss Maus.
4 They're -- they're referenced in -- in both of those routing
5 comment documents for Robinson and Deuschle, and when we were
6 asking them questions about what they did at their various
7 times relative -- you know, it was a timeline.

8 I mean, you can see the audit trail data's a marvelous,
9 useful timeline that not only guides what they did with this
10 file and who touched it and who it was passed to and those are
11 questions that we couldn't -- we couldn't ask.

12 And I think our first memo that we did back in April
13 before this laid out a lot of our concerns that we -- we share.
14 We share -- we didn't -- we didn't feel the need to sort of
15 recite them again here today --

16 THE COURT: Right.

17 MR. DOTY: -- but I think 6, 7, 8 are -- are
18 precisely on point 'cause the -- the audit trail data only
19 takes from the time that they have the -- the timeline starts
20 with the application and it ends with -- largely with their
21 rejection, and then everything after that is -- has to do with
22 the litigation and it's been redacted, but it -- it -- it
23 covers the precise timeline of the application so there's --
24 there's 6 and 7 and 8. I mean, it says we sent an email to him
25 on this particular day.

1 I mean, one of the things, if you recall, was that he
2 was -- Mr. Deuschle was rejected at one point, and there was
3 this question of he had sent to supplement his file a copy of
4 his FMCSA exemption, and Werner has maintained throughout this
5 entire thing that they never got it, we never got it, and it
6 was sent certified mail, and Mr. Deuschle got a certified
7 return that it was, in fact, received on or about I'm going to
8 say May 10th. Mr. East can jump in.

9 There are four entries on May 10th where Mr. Hollenbeck
10 opened something, opened a document and then uploaded
11 something, and you can see -- you can see exactly when he did
12 it on May 10th, the day that -- that certified mail says they
13 received it, and they have denied it and -- and he denied it in
14 his deposition, if I recall correctly, and we should be able to
15 say to him, you deny that you received anything from him, then
16 what were you doing -- what were these four entries that you
17 did on that exact same day. Then let's see what he says --

18 THE COURT: Ms. Culhane --

19 MR. DOTY: -- see what his answer is.

20 THE COURT: -- do you want to respond to that?

21 MS. CULHANE: Sure, Judge. A couple of things. One,
22 I deposed Mr. Deuschle and -- and I asked him if he sent the
23 waiver, and I showed him the documents that we received, and he
24 admitted that he must not have sent the waiver to Werner so I
25 would just say that for -- for the record.

1 But, two, I -- I still don't understand topic 6, charging
2 parties' applications to defendants for employment. I don't
3 understand how anything in the audit trail data bears upon the
4 contents of the application. The applications say what they
5 say, the applications have been produced in this lawsuit years
6 ago.

7 I don't see how topic 6 has anything to do with anything
8 that is in the audit trail data and I didn't -- I respectfully
9 didn't understand Mr. Doty to give an explanation specific to
10 that point.

11 With respect to number 7, which talks about communications
12 with the charging parties, there have been emails that have
13 been produced and our -- our witnesses were deposed about them
14 extensively, including Ms. Maus and Mr. Hollenbeck were deposed
15 about their communications with the charging parties.

16 Mr. Doty has not pointed to anything in the audit trail
17 data that I understand that would add anything to that
18 discussion.

19 MR. DOTY: I just --

20 MS. CULHANE: (Indiscernible) --

21 MR. DOTY: -- (indiscernible) --

22 THE COURT: Hold on. Hold on. One at a time.

23 MR. DOTY: Okay.

24 THE COURT: Let her finish.

25 Go ahead.

1 MS. CULHANE: Thank you.

2 The -- Topic number 8 talks about Werner's refusal to
3 hire the charging parties, including the reasons for those
4 decisions. There's nothing about the reasons for Werner's
5 decisions that I've seen in the audit trail data and our
6 witnesses were subjected to numerous hours of deposition on
7 that topic.

8 To the extent he -- he's citing the fact that it has to do
9 with the identity of individuals who played a role in making,
10 reviewing or supporting that decision, all of those individuals
11 were identified long before the depositions. The only people
12 who were in the audit trail data that were not identified until
13 the audit trail data came up were essentially admin, I mean,
14 people who did things like upload documents to the system.

15 So I don't think that that warrants reopening a Rule
16 30(b)(6) deposition to address that topic based on a few,
17 couple lines of data when our people have sat for hours of
18 depositions on those topics.

19 THE COURT: Mr. --

20 MR. EAST: Judge, this is Brian East for the
21 intervenor. I just wanted to correct one point. Mr. Deuschle
22 is clear that he sent a document that referenced his waiver,
23 his FMCSA waiver, to Werner by certified mail and so it's
24 misleading to suggest that he didn't send it to them.

25 THE COURT: Okay. Mr. Doty, did you want to say

1 something?

2 MR. DOTY: No. I was just going to say but, you
3 know, that's the communication with them, and I think had we
4 had that document at the 30(b)(6) deposition, we could have
5 challenged Mr. Hollenbeck's credibility, his motive. You know,
6 why -- why would you say that you didn't get it when, in fact,
7 you did something here on May 10th.

8 THE COURT: Well, here's -- here's the issue and I
9 guess how I see this and am going to rule. There's no question
10 that the plaintiff and intervenor did not have this document at
11 the time of the depositions and they should have. So if there
12 are questions that relate to that document with the witnesses,
13 then they're going to be entitled to retake the deposition as
14 it relates to that. This is not an opening to rehash other
15 issues.

16 So what that means is -- and I understand, Ms. Culhane,
17 potentially what you are saying in that, okay, number 6,
18 charging parties' application to defendants for employment.
19 I -- so the question is, now, the data trail document very well
20 may show that these different parties dealt with it and it went
21 through this -- this channel and you can see it through the
22 data trail document -- am I saying -- yeah -- or the audit
23 trail document to show that that's what occurred, and if that's
24 in the data trail document, then they're entitled to ask
25 questions on that.

1 Now, Defendant's communication with charging parties,
2 depends on what you mean by communication and if there's
3 information in the -- in the -- the audit trail document that
4 is different or in addition to what has already been testified
5 to as to the communication and how that was done, then they're
6 entitled to talk about that and do depositions of individuals
7 in regards to that.

8 Now, Defendant's refusal to hire the charging parties. I
9 don't think the audit trail documents have anything to do with
10 that and, Mr. Doty, you can correct me if I'm wrong but I don't
11 know how they would, quite honestly, includ- --

12 MR. DOTY: Well, Judge --

13 THE COURT: -- including the reasons for the
14 decision. None of that's in the audit trail, right? I mean,
15 now, there may be a document that was sent in regards to that
16 and that's fine, I think you can talk about that but the
17 reason -- the reason for not hiring is not going to be in the
18 audit trail.

19 MR. DOTY: Well, except -- so, Your Honor, it --
20 it's -- it's sort of the Sherlock Holmes the dog that doesn't
21 bark. I mean, their position from the EEOC's investigation on
22 forward has been that they didn't hire Andrew Deuschle -- use
23 him as an example -- is because he did not attend a -- a
24 Werner-approved truck driving school, and Mr. East can correct
25 me if I'm wrong here.

1 So that position was because he didn't attend the
2 Werner-approved truck driving school, we didn't hire him. That
3 was one of our reasons. Well, what the audit trail data says
4 very clear is -- is that -- and, again, I'm not looking at the
5 date but there's a date that it says they change -- they --
6 they recognized they made a mistake and then changed the -- the
7 school code for his school, and we should be able to ask them
8 about that.

9 The other thing they said is, well, he didn't --

10 Well, Brian, do you -- do you want to chime in about what
11 the audit -- you probably have a better understanding of it.

12 MR. EAST: No. Go ahead, Grant. I -- I don't.
13 I'll defer to you.

14 MR. DOTY: Yeah, so --

15 MR. EAST: I (indiscernible) more about the school
16 codes.

17 MR. DOTY: Yeah. So one is the school code and then
18 the second thing is, is that they said that Mr. Deuschle
19 wrongly applied for a -- what's -- what's -- what would be the
20 intermediate truck driving position, not a new truck driver and
21 not an experienced truck driver but sort of the middle level
22 truck driving position.

23 And because he wasn't qualified, he hadn't driven six
24 months, he really should have been applying for the new truck
25 driver training position, and there's an audit trail data entry

1 for Mr. Hollenbeck where he says, I'm passing this one to you
2 because he's really not a -- a middle truck driver, he's --
3 he's a -- he's a -- a trainee. That's where he -- he's going
4 to come as a trainee.

5 So they didn't reject him because of that. They did the
6 right thing which is they moved him to the other category and
7 so their claim from the EEOC investigation that he applied for
8 the wrong position and wasn't qualified is pretext.

9 And so even though it doesn't say we rejected him for this
10 reason, we know what they claim to be their rejection and we
11 would have been able to ask them, If you claimed it was that,
12 why did you, in fact, pass it on to Miss So-and-so to say it's
13 a trainee position. So completely relevant and I think the
14 audit trail data is spot on.

15 MS. CULHANE: Judge, can I respond briefly?

16 THE COURT: Sure.

17 MS. CULHANE: On the school issue, I -- I -- I take
18 issue with Mr. Doty's summary of what's been alleged in this
19 lawsuit. Back at the time of the EEOC investigation, when the
20 initial response was prepared, in-house counsel was provided
21 with some incorrect information about the school code and
22 provided that information to EEOC and thereafter clarified in
23 writing to the EEOC that that was not a reason and she had
24 provided incorrect information.

25 So the school code is, in my view, a red herring. It was

1 a mistake that was made by -- by in-house counsel a long time
2 ago back before this went to suit and it was -- and the EEOC
3 was advised of that mistake a long time ago before this went to
4 suit.

5 With respect to the issue about his experience, I mean,
6 all of this stuff was already discussed. There was lengthy
7 depositions taken on the issue of his experience and what
8 experience you have to have to be a student driver versus a
9 qualified driver. I mean, all these issues that Mr. Doty is
10 bringing up as the alleged pretext were debated ad infinitum
11 with our witnesses during over 12 hours of depositions in
12 January, and to me, redoing those topics based on a few lines
13 of data, the vast majority of which say things like driver item
14 merged to system, don't have anything to do with these topics,
15 and -- and it just seems like this is an attempt to redo a lot
16 of work that's already been done here.

17 So from my perspective --

18 MR. DOTY: Your Honor --

19 MS. CULHANE: -- Your Honor was exactly correct. The
20 topic 8, our decision -- the decisions made by Werner with
21 respect to their applications, the -- the audit trail data
22 doesn't speak to that and there's no point in redoing
23 deposition topics on those.

24 MR. DOTY: Your Honor, I'm not -- I'm not
25 (indiscernible) the second point where Ms. Culhane commented

1 that we discussed the issue ad infinitum regarding the --
2 the -- the -- the job that he applied for.

3 What she didn't deny was they did claim that that was one
4 of the reasons why he was not hired, and the depositions would
5 have been a lot better had he denied -- had Mr. Hollenbeck
6 denied, for example, that that was why, and then we could point
7 to that particular line and say but yet on this day, didn't you
8 transfer the file with the guidance that he is, in fact,
9 applying for a driver trainee position, and -- and -- and I
10 think he would have stood there in stunned silence, and that
11 would be an incredible video moment in front of a jury, and you
12 can't -- the Court -- and we don't believe should deny that
13 opportunity to us.

14 MS. CULHANE: Judge, what we've said in this case is
15 that both of these drivers would have been required to go
16 through Werner's student driver program and Werner did not
17 believe that it could safely train the drivers in the student
18 driver program because there's no way for them to keep their
19 eyes on the road while simultaneously communicating with their
20 driver trainer. That's what we've said about why we didn't
21 hire these drivers.

22 And so the audit trail data doesn't speak to that and it's
23 not going to provide additional information about the decision.
24 I mean, that's what we've said in this lawsuit. That's --
25 that's Werner's position.

1 THE COURT: Okay.

2 MR. DOTY: That's the position --

3 MS. CULHANE: It's about safety. And I don't
4 understand how the audit trail data speaks to that issue.

5 MR. DOTY: That's the position now, Your Honor, but
6 Mr. East [sic], that's not why he was not hired. He was not
7 hired because they said they couldn't train him. He was not
8 hired because they said he applied for the wrong job and he
9 went to the wrong school, end -- end of argument. That is
10 their position.

11 The second issue, whether they're willing to hire deaf
12 drivers, go to the injunctive element of the EEOC's claim which
13 we think is important but that's not relevant to Mr. Deuschle's
14 harm and Mr. Deuschle's discrimination.

15 And the audit trail data specifically shows a -- a point
16 that runs absolutely counter to what they claim throughout the
17 entire lawsuit.

18 THE COURT: Well, and here's the issue. I mean,
19 obviously, the defendant cannot dictate what questions and how
20 the plaintiff wants to get their evidence or proves their case,
21 and the problem that we have here is there is information that
22 had the plaintiffs had it at the time of the deposition, they
23 would have questioned on it.

24 So I will -- I'm going to allow the 30(b)(6) on those
25 topics, on 6, 7, 8, 39 and 40, as well as on the RCD documents

1 that we talked about which is in number 5 but I want to be
2 clear. I -- This is not reopening all of -- so all of
3 questioning obviously in this case.

4 It -- it -- So what I would foresee is that this is not
5 going to be very lengthy because it has to deal with the audit
6 trail data and what that data shows in relationship to either
7 what -- what they've already previously testified to 'cause
8 what I'm hearing is they've testified to this and now we've got
9 this audit trail data and it's showing something different or
10 you have a question in regards to what's on the audit trail.

11 I guess what I'm trying to say is it needs to focus on
12 that 'cause it is not this Court's intention to reopen a
13 deposition to talk about anything and everything in relation to
14 6, 7 and 8. It has to be in relationship to the audit trail
15 data.

16 Understand? Makes sense?

17 MR. DOTY: Yes, Your Honor.

18 THE COURT: Okay. All right. So then 7 has to do
19 with extending the motion to compel deadline to October 24th
20 which I will tell you makes sense due to the other orders of
21 the Court today.

22 So I guess the question I have is in requiring Werner to
23 do searches of these other items and the databases but I think
24 we need to know what the databases are to determine what needs
25 to be searched, how long -- how long do you think it would take

1 Werner to put together the databases and what they are?

2 MR. CRAINER: Judge, I'm -- Brandon Crainer here.
3 I'm not sure how long that would take. I -- I know there's 400
4 databases and it's not clear from the title so I -- I would
5 have to confer with our IT people.

6 THE COURT: Well -- and that's fine. What -- what I
7 will do is I'm going to extend the motion to compel till
8 October 24th but will extend that further if -- obviously I
9 want this done by Werner in quick order 'cause this case needs
10 to keep moving, but obviously if there's a -- a issue, then you
11 can let the Court know and I can extend that date if we need to
12 do that further.

13 MS. CULHANE: Judge, can I just --

14 THE COURT: Yeah.

15 MS. CULHANE: -- can I just speak real quickly on
16 that issue?

17 THE COURT: On which issue?

18 MS. CULHANE: This is Liz -- I'm sorry, on the
19 October 24th date.

20 THE COURT: Sure.

21 MS. CULHANE: Judge, this is Liz Culhane.

22 THE COURT: Yeah.

23 MS. CULHANE: Yeah, I just wanted to just raise two
24 issues. First, the EEOC's position statement states that at
25 the last hearing the Court extended only their deadline for

1 discovery but that's not correct.

2 The Court extended both parties' deadlines for the
3 discovery deadline, the deposition deadline and the motion to
4 compel deadline, and the reason the Court did so is you
5 recognized that because they are going to delay other fact
6 depositions until they complete what they believe is the
7 additional document search that both parties may have issues
8 that come up during the later fact depositions that require
9 additional discovery.

10 And -- and --

11 THE COURT: Right.

12 MS. CULHANE: -- we already had that discussion back
13 in April. And so from our perspective this request to extend
14 one party's deadline, it should be a mutual deadline because I
15 think they're still asking the same thing. I mean, they want
16 to delay all the fact depositions until -- there -- there's
17 other fact witnesses --

18 THE COURT: Sure.

19 MS. CULHANE: -- that they want to delay till they
20 finish this new 30(b)(6). That's one point.

21 The only other thing I would ask, Judge, is that we are in
22 a two-week trial in October, including through the week of
23 October 24th --

24 THE COURT: Okay.

25 MS. CULHANE: -- so if the Court is inclined to grant

1 that extension, we would ask you to push it out another month
2 because we're going to have a couple weeks in there where we're
3 not going to be able to be doing depositions in this case and I
4 note that he's asked for an extension of the discovery deadline
5 to be on that date as well.

6 My concern is we're going to get a flurry of requests
7 to -- for depositions in this case during the last two weeks of
8 the discovery deadline which is what happened last time. In
9 May I think they noticed eight depositions to occur over a
10 12-day period right up to the last date.

11 I wouldn't be able to do that if the Court puts the
12 deadline on October 24th because we are in a two-week trial in
13 another case. So I would just ask the Court to consider
14 putting it toward the end of November to account for that trial
15 schedule issue and to make the deadlines mutual for the same
16 reasons you did last time.

17 THE COURT: Any objection to that, Mr. Doty?

18 MR. DOTY: I don't object, Your Honor, to the, you
19 know, further, you know, extension out a month. I think that's
20 great 'cause I -- I don't want to be pushing against their
21 trial. I mean, I think our -- my understanding from the
22 April one was we didn't want -- and I don't believe the Court
23 wanted -- Werner to benefit from something that was caused by
24 them but I do understand that the depositions that we're going
25 to be doing, both parties should go out until that date.

1 THE COURT: All right. So I'll -- I will extend
2 everything to November 30th.

3 MS. CULHANE: Thank you, Judge.

4 THE COURT: So, yeah, the discovery deadlines will be
5 extended until then, including the motion to compel deadline.

6 So -- all right. So that takes care of the EEOC's issues.

7 So moving then to the -- Werner's two issues, first, the
8 subpoena of Dr. Tricia Lynn which -- and I guess I need to
9 clarify because Werner's submission indicates that they limited
10 the request for information from that doctor as to Robinson's
11 treatment for high blood pressure only, and the EEOC's
12 submission seems to indicate that it was not limited unless I
13 read that wrong.

14 MS. CULHANE: This is Liz --

15 MR. CRAINER: Judge, allow me --

16 MS. CULHANE: Go ahead, Brandon.

17 THE COURT: Yes.

18 MR. CRAINER: I'm sorry. I'm sorry. This is -- this
19 is Brandon Crainer on for Dr. Wright. Our -- our subpoena --
20 and I don't have it in front of me, unfortunately, but I -- I
21 believe our subpoena was -- was asking for all of his treatment
22 records but, again, I don't have that in front of me but -- so
23 here -- here -- here's the thing, though, about the subpoena to
24 Dr. Wright and the reason why we're seeking it and -- and the
25 reason why we think we should be allowed to serve the subpoena.

1 So Mr. Robinson testified under oath that his high blood
2 pressure worsened due to his interactions with Werner.

3 THE COURT: Right.

4 MR. CRAINER: That was alleged in the complaint by
5 the EEOC and that was also asserted in an interrogatory answer.
6 When we requested the medical records relating to his -- his --
7 his treatment there, after some discussion they stated they
8 would withdraw that claim so in their opinion and their view,
9 the -- the records are no longer relevant.

10 I don't necessarily know what they mean by withdrawing the
11 claim because there was no specific claim as to -- to blood
12 pressure. He gave that testimony when we asked him under oath
13 to describe the damages that he suffered as a result of his
14 interactions with Werner, but withdrawing it and ignoring the
15 testimony is -- is certainly not sufficient.

16 Now after we've received that testimony under oath and are
17 following and -- and checking on it, the EEOC responded, look,
18 we just won't have him testify about it so there you go, don't
19 need the records. And incredibly in a footnote that Mr. Doty
20 put in his position statement was that truthfulness is a
21 collateral matter and -- and we most certainly disagree with
22 that. Truthfulness is -- is at the heart of -- of -- of the
23 case and Mr. Robinson's testimony.

24 The jury, as you know, will be instructed to consider the
25 credibility of the witness in -- in ruling on the EEOC's

1 claims. So in our view, the records from Dr. Wright are
2 directly relevant to what Mr. Robinson did under oath, that his
3 high blood pressure condition worsened as a result of his
4 interaction with Werner, and we should be investigated
5 to permit -- we should be permitted to investigate those
6 allegations.

7 If the records tend to show it -- tend to show that his
8 testimony on that point is untrue, then that goes directly to
9 the heart of this lawsuit because it calls into question his
10 testimony about his alleged damages. So that is why we are
11 seeking the subpoena to Dr. Wright.

12 THE COURT: But you're willing to limit that just to
13 his high blood pressure, correct?

14 MR. CRAINER: Yes. Yes.

15 THE COURT: Okay.

16 MR. CRAINER: Yes, Judge.

17 THE COURT: All right. Mr. Doty.

18 MS. BERWICK: Your Honor, this is Meredith Berwick.
19 I've been handling this issue --

20 THE COURT: Yes.

21 MS. BERWICK: -- with Mr. Crainer.

22 So that is a new position of Defendant's that they would
23 limit it to high blood pressure, and, again, we reassert our
24 offer to withdraw the claim related to his high blood pressure.
25 If he does not present evidence related to his high blood

1 pressure, then it is a collateral matter to the case.

2 They're not claiming that -- you know, that it was an
3 issue with his application. You know, for instance, when he
4 went in for his DOT physical or the FMCSA information, that was
5 collected. They're only claiming that he's a liar because he
6 has a damage that he presented and now when his privacy, you
7 know, is at issue in order to prove that damage, he would
8 prefer to maintain his privacy and his medical records, you
9 know, similar -- I've had clients who, you know, claimed they
10 lost their car but then when it, you know, turned out they were
11 going to have to give up some of their financial information to
12 the other side as part of that, they have chosen to withdraw
13 the claim, and the defendant hasn't pursued it.

14 And ordinarily defendants are happy when we say, you know,
15 here's a damage that we thought we had but we're not going to
16 pursue it any further in the interests of our client's privacy.
17 If they had anything else regarding his veracity in the medical
18 records that they've already received through the employers,
19 they -- they would have pointed it out.

20 So I'm still perplexed as to why the plaintiff's removal
21 of this claim of damages regarding his high blood pressure
22 would not resolve this issue.

23 MR. CRAINER: Judge, and -- and what I'll say is just
24 a quick response to that. This goes directly to his
25 credibility. Truthfulness is not a collateral matter here so

1 I -- I would say that we -- we should have the -- the subpoena
2 issued so that we could obtain that as to high blood pressure
3 records in -- in order that -- that are relevant to his claim
4 of damages.

5 THE COURT: All right. As to that issue, because he
6 has testified under oath to that issue, I am going to allow the
7 subpoena for medical records relating to his blood pressure
8 only.

9 MR. CRAINER: Thank you, Your Honor.

10 THE COURT: All right. Move --

11 MS. BERWICK: Okay.

12 THE COURT: Sorry. Did somebody want to say
13 something?

14 MS. BERWICK: Oh, no.

15 THE COURT: All right.

16 MS. BERWICK: Just thank you, Your Honor.

17 THE COURT: All right. And then moving on to B,
18 which is the authorization for release of the Aspire Indian --
19 Indiana Health records, and as I understand it, there was a
20 subpoena which nobody objected to and then under state law
21 there needs to be a release and that there were conversations
22 between the parties and that EEOC was trying to get -- get
23 Mr. Robinson to sign the release, that did not happen, and I
24 don't know that there was anything else argued or talked about
25 in regards to that, but obviously this has now been brought to

1 the Court's attention, and what I mean by that is the
2 plaintiffs indicate that they do have a concern with the
3 release because it is saying it should go until 60 days after
4 termination of their services versus the litigation.

5 And I -- so I don't know if the EEOC has -- or, excuse me,
6 if Werner has any issue with limiting the release to when this
7 litigation is either -- is decided either based on -- on motion
8 or a trial till there's a resolution limiting it to that, and
9 if -- and if so, if that solves the issue.

10 MS. CULHANE: Your Honor --

11 MR. CRAINER: Judge, yes -- so -- I'm sorry. Real --
12 real quick, Judge, on the -- on the subpoena to Aspire. We
13 just want a release that's going to allow us to get the
14 records. We did just receive an email at the last minute from
15 counsel --

16 MS. CULHANE: Last month or --

17 MR. CRAINER: -- yesterday with -- with the
18 release --

19 THE COURT: Okay.

20 MR. CRAINER: -- that they suggested changing. The
21 issue why we brought this forward and -- and the issue that I
22 took with their position statement is that they're starting to
23 raise objections and trying to limit what the subpoena is
24 seeking when they never even had any objections --

25 THE COURT: Right.

1 MR. CRAINER: -- at the outset.

2 Back in April counsel said, look, we have no objection
3 and -- and now after the fact they're -- they're trying to
4 limit what we're going to obtain. It's kind of like the -- the
5 same issue that we had last time when we were seeking to
6 subpoena the FMCSA.

7 MS. CULHANE: Right.

8 MS. BERWICK: Your Honor, if I may, what Brandon
9 isn't telling you is that the release I sent last night does
10 not limit the documents sent in any regard.

11 MR. CRAINER: No. And -- and --

12 MS. BERWICK: It just stated --

13 MR. CRAINER: -- and I -- I --

14 MS. BERWICK: -- (indiscernible).

15 MR. CRAINER: -- I was certainly getting there,
16 Judge, so thank you.

17 But what I'm saying is that we're -- we will take the
18 release however we can get it. What I would ask, though, is
19 that -- as I've stated in our letter to the Court -- just that
20 it be signed within five days and provided within seven days
21 thereafter so that we can have it as soon as possible and that
22 we can -- that we can issue it.

23 THE COURT: Okay. So are you fine with the release
24 as you have it now?

25 MS. BERWICK: With the copy of the release --

1 MR. CRAINER: I don't --

2 MS. BERWICK: -- that I sent them last night, we are
3 okay with that.

4 THE COURT: Right. But I'm asking Mr. Crainer if
5 he's okay with it.

6 MS. BERWICK: Sorry.

7 MR. CRAINER: Other -- other than the fact it's not
8 signed but yes, yes. I'm fine.

9 THE COURT: Okay.

10 MR. CRAINER: I don't think there's any -- anything
11 else that needs to be changed. It needs to be signed.

12 THE COURT: All right. So, Miss Berwick, can you get
13 that signed by Mr. Robinson within five days and back to
14 counsel within seven days?

15 MS. BERWICK: Yeah, that shouldn't be a problem. Can
16 the defendants -- can it be ordered that the defendants provide
17 us the documents they receive within, say, ten days of
18 receiving them?

19 THE COURT: Any objection?

20 MR. CRAINER: That's fine, Judge.

21 THE COURT: Okay. All right. Defendant will within
22 ten days provide records to Plaintiff.

23 Okay. All right. I think that takes care of all of the
24 issues today. So I will enter an order based on what we talked
25 about today.

1 Is there anything else, Mr. Doty, from you today?

2 MR. DOTY: No, Your Honor. Thank you.

3 THE COURT: Anything else on beha- -- Mr. East, on
4 behalf of the intervenor?

5 MR. EAST: No, Your Honor. Thank you.

6 THE COURT: All right. Anything further from Werner
7 Enterprises?

8 MR. CRAINER: No, Your Honor. Thank you.

9 THE COURT: All right. Thank you, everybody. I'll
10 go off the record.

11 (Adjourned at 2:33 p.m.)

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15 I, Rogene S. Schroder, certify that the foregoing is a
16 correct transcription to the best of my ability from the
17 digital recording of the proceedings held in the above-entitled
18 matter.

19 /s/Rogene S. Schroder
20 Transcriber

October 22, 2021
 Date

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